

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 362 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 : No

GANANBA WOMSINH PAREKHIA THROUGH JASWANTSINH K PAREKHIA

Versus

STATE OF GUJARAT

Appearance:

MS PAURAMI B SHETH for Petitioner
MR SR DIVETIA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/06/98

ORAL JUDGEMENT

Heard learned advocate Ms. P.B Sheth for the applicant.

2. Applicant is the original complainant. Criminal case No. 1099 of 1996 has been initiated against the accused -Opponent no. 2. The subject matter of

complaint being two bullocks which, the complainant claims, belong to her. Earlier the complainant made an application for recovery of possession of the said bullocks and was granted by the learned Magistrate under his judgment and order dated 7th September, 1996.

3. Feeling aggrieved, the accused - Opponent no. 2 preferred revision application No. 136 of 1996 before the learned Additional Sessions Judge, Vadodara which was allowed and the order made by the learned Magistrate on 7th September, 1996 was set-aside. Feeling aggrieved, the applicant-complainant preferred Special Criminal Application No. 275 of 1997 which came to be rejected by this Court {Coram : Mr. Justice N.N Mathur, J.} on 4th April, 1997. Petitioner thereafter preferred another application on 10th October, 1997 for recovery of the said two bullocks. The said application was rejected by the learned Magistrate on 23rd March, 1998. Feeling aggrieved, the applicant has preferred this application under Section 397 read with Section 401 of the Code of Criminal Procedure.

4. Ms. Sheth has argued that earlier on 8th August, 1996, the learned Magistrate had directed the police to recover Bullocks and keep it in the custody of the police. The said order was modified on 9th August, 1996 and the police was directed to prepare a report in respect of the said bullocks and place it before the learned Magistrate. Ms. Sheth has submitted that these two orders made by the learned Magistrate on 8th & 9th of August, 1996 were not available with the complainant at the time of hearing of the criminal revision application before the learned Addl. Sessions Judge and the Special Criminal Application before this Court which has resulted in miscarriage of justice. She has further submitted that the police has flouted the orders made by the learned Magistrate on 9th August, 1996 and instead of making report to the learned Magistrate; as directed, the police recovered possession of the bullocks from one Shamlabhai Varnanbhai of Tarsali and handed over the same to the accused-Opponent no. 2. Ms. Sheth has therefore submitted that the police has acted in flagrant violation of the order of the learned Magistrate. The petitioner, at the relevant time, could not bring these facts to the notice of the courts and therefore, the orders one made by the lower Court on revision application and the one made on writ petition by this Court are not based on true facts. She has contended that in the circumstances, the second application for delivery of possession of muddamal

preferred by the applicant is maintainable and should have been decided on merits.

5. I am afraid, I cannot accept the contention raised by Ms. Sheth. Applicant's application for recovery of possession of muddamal {two bullocks} has been rejected by the learned Addl. Sessions Judge, as aforesaid and the order of the learned Addl. Sessions Judge has been confirmed by this Court. In the circumstances, the second application preferred by the applicant on 10th October, 1997 has been rightly rejected by the learned Magistrate on 23rd March, 1998. No other contention has been raised by the learned advocate for the applicant. This application is, therefore, summarily rejected.

PRAKASH